
OLR Bill Analysis

sSB 260 (File 127, as amended by Senate "A")*

AN ACT CONCERNING THE DUTIES OF A CONSERVATOR AND OTHER PERSONS AUTHORIZED TO MAKE DECISIONS RELATING TO THE CARE AND DISPOSITION OF A DECEASED PERSON'S BODY.

SUMMARY:

This bill makes various changes concerning the disposition of a body after a person's death. It allows an agent with power of attorney to execute a written document before the principal's death (1) directing the body's disposition upon death or (2) designating someone to have custody and control of the body's disposition upon death. It gives the same authority to a conservator in regard to the conserved person's body after death, but only if the probate court expressly authorizes it.

The bill generally prohibits someone with custody and control of the disposition of a deceased person's body from knowingly providing for disposition in a manner inconsistent with such documents or a person's own advance directive or other document setting forth health care instructions (including those relating to anatomical gifts). But, a contrary disposition is allowed if approved by the probate court.

The bill specifies that when multiple people have equal disposition rights over a deceased relative's body, a majority who can be located and want to participate make the arrangements.

By law, a conservator cannot revoke the conserved person's advance health care directive unless the appointing court expressly authorizes it. The bill also prohibits conservators, without such authorization, from revoking a document executed by the conserved person or his or her agent with power of attorney concerning the body's disposition and designation of custody and control upon death.

With some exceptions, existing law gives a health care decision of a

health care representative precedence over that of a conservator (see BACKGROUND). The bill extends this precedence and the exceptions to decisions concerning the disposition of the person's body.

*Senate Amendment "A" adds (1) to the documents that someone with custody and control of a deceased body must abide by when providing for the body's disposition, (2) the requirement that a conservator's document specifies when it is valid, and (3) the provisions on (a) when a conservator can revoke a document and (b) the precedence of a health care representative's decision.

EFFECTIVE DATE: October 1, 2014

DISPOSITION OF BODY AFTER DEATH

Agents and Conservators

The bill extends to the documents that agents and conservators can execute to direct a body's disposition after death the same conditions as currently apply to advance directives that people execute for themselves. Thus, the document must be signed by the agent or conservator and attested by two witnesses. The document can:

1. direct the body's disposition after death (e.g., cremation, burial);
2. designate someone to (a) have custody and control of the body and (b) if applicable, carry out the directions for disposition; or
3. do both of the above.

If the document designates an individual, it can also designate an alternate.

The bill also requires such a document executed by a conservator to include provisions indicating that the document (1) is valid if the person is under conservatorship at the time of his or her death and (2) terminates upon the end of the conservatorship if that occurs before the conserved person's death.

Existing law generally prohibits anyone from challenging a funeral director's decision to carry out disposition directions contained in an

advance directive. This same prohibition applies under the bill to a conservator's or agent's disposition document.

Existing law also provides that a later properly executed advance directive revokes any previous such document. This also applies to a conservator's or agent's document.

Existing law sets out a model form for an individual's advance directive for disposition of his or her body. The bill does not set out a similar model form for use by agents or conservators.

Disposition by Next of Kin in Absence of Designation

Under existing law, the right to custody and control of a deceased person's body belongs to the person's next of kin if (1) the person did not designate an individual in an advance directive or (2) any designated individual or alternate declines to act or cannot be located within 48 hours after the death or discovery of the body. Custody and control are subject to any disposition directions in the deceased person's advance directive. Under the bill, the same rule applies to agents' or conservators' written documents.

By law, the first priority for having custody and control generally rests with the spouse, if any, and subsequent priority rests with other relatives (see BACKGROUND). If (1) there is no surviving spouse or the spouse does not have priority and (2) multiple other relatives have equal priority, the bill provides that custody and control of the body rest in a majority of the relatives who can be located and who indicate, in writing, their willingness to participate in making disposition arrangements within a reasonable time, up to 10 days after the deceased is identified.

BACKGROUND

Order of Priority for Making Disposition Arrangements

By law, a deceased person's remains belong to the person's next of kin, unless he or she legally appointed someone else. In this context, the next of kin, in order of priority, are the decedent's:

1. surviving spouse, unless the spouse abandoned the decedent or

- a court adjudged the spouse to be incapable;
2. surviving adult children;
 3. surviving parents;
 4. surviving siblings; and
 5. any other adult in the next degree of kinship in the order named by law to inherit the decedent's estate, as long as that person is within the third degree of kinship or higher (e.g., aunts, uncles, grandparents).

If there are no such surviving relatives, custody and control rests with another adult chosen by the probate court (CGS § 45a-318).

Health Care Decisions of Health Care Representative and Conservator

By law, a health care decision of a person's health care representative generally takes precedence over a decision of the person's conservator. But this does not apply if:

1. there is a court order to the contrary;
2. the decision concerns someone subject to the laws on examination of certain convicted persons, temporary leaves or conditional release of acquittees in hospitals for psychiatric disabilities, or competency to stand trial;
3. the conservator has been appointed for a person who is subject to an order concerning administration of medication for treatment of psychiatric disabilities, for the duration of the person's hospitalization; or
4. the conservator has been appointed for a person subject to an order concerning medication administration to a criminal defendant placed in the custody of the mental health and addiction services commissioner (CGS § 19a-580e).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/10/2014)